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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE LEWIS REYNA,

Defendant and Appellant.

F045875

(Super. Ct. No. BF105003A)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Kern County. Lee P. Felice, Judge.

Richard Power, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Kathleen A. McKenna and William K. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant, George Lewis Reyna, appeals from sentence upon conviction of Penal Code section 288, subdivision (a).<sup>1</sup> He contends the court erred by refusing his request

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\* Before Buckley, Acting P.J., Wiseman, J., and Cornell, J.

that he be referred for preparation of a section 288.1 report, a requirement for granting probation in such cases.<sup>2</sup>

As defendant acknowledges, a court is not required to order a section 288.1 report unless probation is going to be granted.<sup>3</sup> (*People v. Thompson* (1989) 214 Cal.App.3d 1547, 1549.) However, he then asserts as an abuse of discretion the court's refusal to "at least" order a report as part of defendant's application for probation.

Given the record in this case, the substantial sexual assault with resulting sexually transmitted disease upon a four-year-old child and defendant's denial of culpability, an assertion that the court abused its discretion in failing to order a section 288.1 report is ludicrous.

### **DISPOSITION**

The judgment is affirmed.

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<sup>1</sup> Further statutory references are to the Penal Code.

<sup>2</sup> The parties disagree about whether this is or is not a "probation eligible" offense. Defendant, 18 years old, pled to molestation of his four-year-old sister. An examination of her revealed contusions in her vaginal area consistent with partial penetration. She also had contracted Chlamydia. The parties disagree as to whether this evidence constitutes "bodily injury"; a disqualifying factor under section 1203.066, subdivision (a)(2). As we dispose of this case on another basis, we need not resolve this issue.

<sup>3</sup> The court stated: "Given the incidents involved and the defendant's persistence in denying culpability, the Court at this time finds that there's no reason to appoint a doctor under 288.1. [¶] I'm going to deny probation."